THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.NO.13379 OF 1997
Dated: 01-12-2006

Between:

T.Christopher Petitioner

And

Girijan Cooperative Corporation Ltd.,
rep. by its Vice Chairman and Managing Director,
Visakhapatnam and two others

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.NO.13379 OF 1997

ORDER:

1. This writ petition has been filed by a former Divisional Manager of Girijan Cooperative Corporation Limited, Eturnagaram, calling in question, the correctness of the orders passed by the primary authority on 25.1.1996 imposing upon him the punishment of stoppage of two annual grade increments with cumulative effect. The appeal preferred against the said order of punishment to the appellate authority has been turned down by the order dated 28-12-1996 which was communicated through an order of the Vice Chairman and Managing Director on 25.1.1997. The writ petitioner while working as a Senior Manager of the first respondent corporation was subjected to disciplinary proceedings though the charge memo dated 16.9.1994, a set of two charges are framed against the writ petitioner, which are as follows:

> ***CHARGE-1:-***
> ***"That Sri T.Christopher miserably failed to check the Liability accounts of Sri Ch.Koteswara Rao, the C.C.C.P.A., Pedda Dornala (U/s), which resulted in the misappropriation of Corporation funds by Sri Ch.Koteswara Rao.. He failed to take timely and effective supervision and neglected his legitimate duties with malafide intention. His dereliction of duties, has contributed to the pecuniary loss to the Corporation"***
> ***CHARGE-II:-***
> ***" That he failed miserably to exercise financial control in sanctioning purchase advances to the C.C.P.A., without getting their accounts settled, with ulterior motive and malafide intention for personal gain."***

2. Through yet another charge memo dated 17.9.1994, another set of two charges have been framed against the writ petitioner, which are as follows:

> ***CHARGE NO.I:- "That Sri T.Christopher miserably failed to check the liability accounts of Sri P.Sambasiva Rao, C.C.P.A., Dornala and also***

failed to supervise the stocks and accounts of D.R.Sub depot, Peddamanathanala which resulted in the misappropriation of Corporation funds by Sri P.Sambasiva Rao. He failed to take timely and effective supervision and negliged his legitimate duties, with malafide intentions. His dereliction of duties has contributed to the pecuniary loss to the Corporation."

CHARGE NO.II:- "That he failed miserably to exercise financial control in sanctioning purchase advance to Sri P.Sambasiva Rao, C.C.P.A., without getting his accounts settled with ulterior motive with malafide intention for personal gain."

3. Since the writ petitioner has denied the charges, an enquiry officer had been appointed for conducting the enquiry in to the both sets of charge memos. The enquiry officer submitted his report on 30th October,1994 and he had returned a finding that the writ petitioner is not guilty of the charges framed against him and he has taken timely action by issuing U.O. note memos and bringing it to the notice of the Divisional Manager the irregularities committed by the two employees concerned by name Ch.Koteshwara Rao and Sri P.Sambasiva Rao, which in turn resulted in suspending those employees and recovering the entire misappropriated amount from them. Therefore, the findings of the enquiry officer are in favour of the petitioner holding him not guilty of the charges framed against him. While considering the two separate enquiry reports submitted by the enquiry officer on 30-10-1994 in to the both sets of the charge memos referred to supra, the Vice Chairman and Managing Director of the first respondent Corporation had passed an order through his proceedings dated 20-10-1995 holding the writ petitioner as guilty of misconduct and held that the two sets of charges as proved against him. The decision taken by the Vice Chairman and Managing Director through his proceedings dated 20-10-1995 on this issue is as follows:

" Huge stocks balance of M.F.P. was detected as on 13-11-93 and the CCPA handed over only 9,401/- on 14-12-93 leaving balance of 17,957/-. Simply he directed the CCPA to take the truck along with permit and get the M.F.P. stock transported to the godowns and settle the liability account before 25.12.93. But he did not verify whether the stocks were available at purchase point or not. After a lapse of 3 months he issued a memo to the CCPA to finalise the liability account and purchase advance. Thus it is established on record that he failed to take timely action. Therefore the charge is held proved."

The enquiry officer is silent about the purchasing advance pending as on 28.2.94 and the date of fresh advance sanctioned was not indicated in his enquiry report. It is established that the CCPA has to account for the stock worth of Rs.17,616-00 as on 28.2.94. The charged officer simply stated that the liability account is a running account and it cannot be insisted upon for settlement then and there. The charged officer has thoroughly failed to verify the liability account of the CCPA. Therefore, the charge is held proved."

4. After thus holding the petitioner guilty of the charges framed against him, the Vice Chairman and Managing Director had arrived at a provisional conclusion that the punishment of stoppage of periodical increments with cumulative effect be imposed and called for the explanation of the writ petitioner as to why such a punishment should not be imposed through the above said proceedings dated 20-10-1995. Though the writ petitioner has submitted his explanation raising his stout defence in support of his conduct, the Vice Chairman and Managing Director of the first respondent corporation who is the competent authority has finalized the issue by passing orders on 25.1.1996 imposing the punishment of stoppage of two periodical increments with cumulative effect. As already noted supra, the appeal preferred by the writ petitioner against such punishment has also been rejected.

5. Sri G.Ramchandra Rao, the learned counsel for the writ petitioner has raised several contentions in support of the above writ petition. Substantially his contentions are:-

i) the finding recorded by the competent authority that the writ petitioner is guilty of misconduct warranting imposition of punishment against him is not a bonafide conclusion, as the same is not based upon any material or evidence brought on record of the enquiry proceedings,

ii) when the writ petitioner himself had brought out the misdemeanor on the part of the two of his subordinate employees and brought it out to the notice of the Divisional Manager, which has resulted in appropriate action against those defaulting employees which ultimately resulted in the

first respondent corporation recovering the misappropriated money, therefore, since all through the writ petitioner has exhibited *bonafide* and good conduct and hence he cannot be found fault at all and

iii) that the defaulting employees by name Ch.Koteshwara Rao and Sri P.Sambasiva Rao have been imposed with minor punishment of stoppage of three increments without cumulative effect and whereas the corporation had preferred to proceed softly against those who are truly guilty while at the same time the corporation had conducted itself too harshly against the writ petitioner by preferring to impose a major punishment of stoppage of two increments with cumulative effect and thus adopted unfair and different standards in the matter of enforcing discipline amongst the employees.

iv) that the first respondent corporation had disagreed with the findings recorded by the enquiry officer in violation of principles of natural justice, inasmuch as, the writ petitioner had never been provided with any opportunity to put-forth his case before the competent authority, before such authority had decided to disagree with the findings recorded by the enquiry officer. Sri G.Ramachandra Rao, the learned counsel would elaborate his contention by pointing out that what all the Vice Chairman and Managing Director of the first respondent corporation did through his proceedings dated 20-10-1995 is to provide an opportunity to the writ petitioner to show cause as to why the punishment of stoppage of two increments with cumulative effect should not be imposed against him, but the writ petitioner was not provided any opportunity whatsoever before it is concluded that he was guilty of all the two sets of charges framed against him.

Hence, he had been condemned without even being heard.

v) The punishment of stoppage of two increments with cumulative effect is a major punishment and it is not one of the punishments which has been listed out in the service rules governing the employees of the first respondent corporation and therefore, the Vice Chairman and Managing Director of the first respondent corporation has imposed on the writ petitioner a punishment which is not sanctioned to be imposed at all.

vi) On merits, the writ petitioner had exhibited decent and appropriate conduct all through his service and it is in fact, he who had unearthed the misconduct on the part of the two employees-Ch.Koteshwara Rao and P.Sambasiva Rao, after providing a fair and reasonable opportunity for those two employees to properly account for and remedy the mischief and that having noticed that mischief has not abated, the writ petitioner has brought out the misconduct on the part of those two employees to the notice of his superiors of the first respondent corporation and that his superiors in turn have placed those two employees under suspension to begin with and subsequently initiated disciplinary proceedings against them and ultimately recovered the amount of the first respondent corporation which was either misappropriated or utilized but not accounted for, as the case may be. Therefore, according to the learned counsel for the writ petitioner, the writ petitioner ought not to have been penalized at all.

6. Per contra, Sri N. Sridhar Reddy, the learned standing counsel for the first respondent corporation has strenuously tried to defend the action of the first respondent, firstly in imposing the punishment and secondly in rejecting the appeal preferred by the writ petitioner. Sri Sridhar Reddy vehemently

contended that the first respondent corporation being a public sector institution can run and manage it's affairs only if the integrity of it's men and officers is beyond any pale of doubt and unless a sense of discipline and dedication is exhibited by the entire work force of the corporation, the corporation will not be able to reach anyway near the goals set by it for itself.

7. I have given my anxious consideration to the various contentions raised by the writ petitioner, but, however in my opinion it would suffice if I were to consider the contention canvassed by the learned counsel for the writ petitioner relating to the breach of principles of natural justice committed while holding the writ petitioner guilty, at the outset. It is no doubt true that an enquiry officer has been appointed by the first respondent corporation and it was entrusted to him to go in to the matter and record his findings with reference to the material on record as to whether the writ petitioner is guilty of the charges framed against him or not. The enquiry officer had gone in to the exercise and filed his report on 30-10-1994 separately in to the both sets of charges framed against the writ petitioner and the enquiry officer found that the charges are not proved against the writ petitioner. Thus undoubtedly the findings recorded by the enquiry officer are in favour of the writ petitioner. While it is true that the enquiry officer is a mere instrumentality of the first respondent corporation who has been entrusted with the task of collecting the material against the delinquent employee, analyze the same and return a finding thereon but nonetheless the views, opinions and conclusions drawn by such an enquiry Officer are not binding upon the disciplinary authority. An enquiry officer occupies the status of a delegate of the disciplinary authority. Therefore, the disciplinary authority is free and at liberty to disagree with the findings drawn by the enquiry officer as he is not bound by the conclusions or findings recorded by the enquiry officer. There is hardly any dispute on this principle. But however, it is a fundamental principle that no person shall be condemned unheard of. In other words without providing a fair and reasonable opportunity, no adverse action/decision can be taken against any person without providing such a person with an opportunity of putting-forth his side of the case. In the

instant case, while the Chairman and Managing Director had passed orders on 20-10-1995 and concluded the first issue by holding the writ petitioner as guilty of both the sets of charges leveled against him, he did so without putting the writ petitioner on any prior notice. The Vice Chairman and Managing Director had not provided any opportunity whatsoever to the writ petitioner before conclusively disagreeing with the finding recorded by the enquiry officer. In fact, this issue had fallen for consideration before the Supreme Court in the case of **Punjab National Bank and others Vs. Kunj Behari Misra** [1] **a**nd the Supreme Court concluded the same as follows:

> ***"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer."***

8. Thus the order passed on 20-10-1995 by the Vice Chairman and Managing Director of the first respondent corporation in having unilaterally disagreed with the findings recorded by the enquiry officer is in contravention of the principles of natural justice. The actual order of punishment passed on 25-01-1996 draws it's basis or substrum upon the orders issued by the Vice Chairman and Managing Director on 20-10-1995. If the basis or substrum is itself loosely found, the super structure built thereon will not have any independent existence, since the orders passed by the Vice Chairman and Managing Director of the first respondent corporation on 20-5-1995 are in violation of the settled principles of law on the subject, the orders of punishment imposed on 25-01-1996 against the writ petitioner also must necessarily fall. As a natural corollary, the orders of the appellate authority rejecting the appeal of the writ petitioner must also be set-aside. In this view of

the matter, I am relieved from further considering the tenability or otherwise of the rest of the contentions canvassed on behalf of the writ petitioner. For the above aforesaid reasons, the writ petition deserves to be allowed by setting aside the orders passed on 25-01-1996 and the rejection of the appeal on 28-12-1996.

9. The writ petition is, accordingly, allowed and the impugned order imposing punishment on the petitioner dated 25-01-1996 and the order of rejection of the Appeal by the orders dated 28-12-1996 are set-aside, but however without costs.

NOOTY RAMAMOHANA RAO,J

01-12-2006
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[1] AIR 1998 SC 2713